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MOHANNAKUMARAN NAIR

v.

VIJAYAKUMARAN NAIR

OCTOBER 11, 2007

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[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Code of Civil Procedure, 1908:

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ss. 20 & 15—Territorial jurisdiction—Question in regard to the jurisdiction to be determined with reference to the date on which the suit is filed and entertained and not with reference to a future date—Subsequent change of residence of the party-defendant would not confer territorial jurisdiction in the Court which it did not have at the time of institution of the suit.

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s. 115—Jurisdiction under—Held, is discretionary—However, the discretion has to be exercised in accordance with law and not de-hors the same.

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Doctrines—Doctrine of dominus litus—Applicability of—Discussed.

Constitution of India, 1950—Article 136—New plea—Party cannot be permitted to raise new plea before Supreme Court for the first time.

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Appellant borrowed Rupees Six lakhs from Respondent and executed a promissory note to that effect. The monetary transaction took place at Saudi Arabia where both the parties were residing at the relevant time. Respondent filed suit for recovery of said amount before the Trial Court, Attingal, in the State of Kerala, India.

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Appellant filed application challenging maintainability of the suit on ground of lack of territorial jurisdiction. But the application was dismissed. Appellant filed revision petition. High Court held that though the Trial Court did not have territorial jurisdiction to entertain

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the suit on the date of institution, but thereafter Appellant was residing permanently, actually and voluntarily within jurisdiction of the said Trial Court, hence the suit was liable to be considered by it. Hence the present appeal in which it was contended that the High Court itself having held that the suit was not maintainable, it could not have declined to exercise its revisional jurisdiction.

Allowing the appeal, the Court

HELD:1. The Court undoubtedly, exercises a discretionary jurisdiction in terms of Section 115 CPC. Discretion, however, must be exercised in accordance with law and not de-hors the same.

[Para 5] [29-F]

Reliance Airport Developers Pvt. Ltd. v. Airports Authority of India and Ors., (2006) 11 SCALE 208, relied on.

2.1. A suit can be filed only when there exists a cause of action and which have arisen within the jurisdiction of the Court. The question in regard to the jurisdiction is required to be determined with reference to the date on which the suit is filed and entertained and not with reference to a future date. If a cause of action arises at a later date, a fresh suit may lie but that would not mean that the suit which was not maintainable on the date of its institution, unless an exceptional case is made out therefor can be held to have been validly instituted. Discretion cannot be exercised, arbitrarily or capriciously. It must be exercised in accordance with law. When there exists a statute, the question of exercise of jurisdiction which would be contrary to the provisions of the statute would not arise.

[Paras 6, 8 and 11] [29-G, H; 30-A, G-H; 31-A]

2.2. Sections 15 and 20 of the CPC provides for the place where a suit can be filed. Section 15 mandates that suit shall be instituted in the Court which is competent to try. Sections 15 and 19 regulates the filing of the suit at the places where cause of action has arisen. Section 20 operates subject to the limitation contained in Sections 15 to 19. [Paras 7 and 8] [29-G; 30-A-B]

2.3. Plaintiff is the dominus litus, but he can file a suit only at

- A **one or the other places specified in the Code of Civil Procedure and not at any place where he desires. Application of doctrine of dominus litus is confined only to the cause of action which would fall within Sections 15 to 18 of the Code of Civil Procedure. It will have no application in a case where the provision of Section 20 thereof is sought to be invoked. [Paras 8 and 12] [30-B; 31-B]**

New Moga Transport Company v. United India Insurance Co. Ltd. and Ors., AIR (2004) SC 2154 and *Jindal Vijayanagar Steel (JSW Steel Ltd.) v. Jindal Praxair Oxygen Company Ltd.*, (2006) 8 SCALE 668, relied on.

- C **3. A distinction must be borne in mind between exercise of jurisdiction by a Civil Court and a Writ Court in this behalf.**
[Para 10] [30-E]

- D *M/s. Kusum Ingots and Alloys Ltd. v. Union of India and Anr.*, AIR (2004) SC 2321 and *Ambika Industries v. Commissioner of Central Excise*, (2007) 8 SCALE 488, relied on.

- E **4. It is one thing to say that the parties had their residences in India but the same would not mean that a suit could be filed at any of the places where the defendant resides. At all material times, the parties were at Saudi Arabia. They were residing there only. They had been working for gain in that country. It is also not a case where under the promissory note the amount was to be paid in India. There is nothing on record to show that any demand was made within the State of Kerala and the defendant was under any contractual obligation to pay the said amount in Kerala where the demand has been communicated. [Para 13] [31-C-D]**

- G **5. The High Court itself has held that no part of cause of action arose in the State of Kerala. Respondent has not questioned that part of the order before this Court questioning the said finding. Respondent, therefore, cannot be permitted to raise the said plea before the Supreme Court for the first time.**

[Paras 14 and 15] [31-E]

- H **6. The contention raised on behalf of the respondent that a part**

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[SINHA, J.]

of cause of action arose within the jurisdiction of the trial court as the appellant made a commitment of payment of the amount within the jurisdiction thereof, cannot be accepted for more than one reason. Firstly, because no such contention had been raised before the High Court. Secondly, because the High Court itself has arrived at a finding that the Trial Judge had no territorial jurisdiction to entertain the suit. It is also not a case where the petitioner had been residing within the local limits of the jurisdiction of the court where the defendant at the time of commencement of the suit was actually or voluntarily residing or carried on business or personally worked for gain. He, at the material time, had been residing in Saudi Arabia. The material date for the purpose invoking Section 20, CPC is the one of institution of the suit and not the subsequent change of residence. Change of residence subsequent to decision of the Court would not confer territorial jurisdiction in the Court which it did not have.

[Para 16, 17 and 18] [31-F-H; 32-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4811 of 2007.

From the Judgment and final Order dated 13.03.2006 of the High Court of Kerala at Ernakulam in C.R.P. No. 820 of 2005.

P.S. Narasimha, M. Gireesh Kumar and Khwairakpam Nobin Singh for the Appellant.

Haris Beeran and Radha Shyam Jena for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Appellant is said to have borrowed a sum of Rs.6,02,000/- (Rupees Six Lacs Two Thousand Only) from the respondent. The said transaction was carried out at Saudi Arabia. Appellant executed a promissory note on 8.5.1999. Admittedly, the parties were residing at Saudi Arabia at the relevant time. No part of the cause of action arose within the jurisdiction of the Court of Subordinate Judge, Attingal. Respondent herein filed a suit for recovery of the aforementioned amount

A in the Subordinate Court at Attingal. Although both the parties were
residing in Saudi Arabia, Plaintiff filed a suit in the Court of Subordinate
Judge, Attingal for recovery of the said amount sometime in the year 2002.
Appellant having been summoned, appeared in the suit. He, *inter alia*,
B court to entertain the suit. By an Order dated 15.3.2005, the application
of the appellant was dismissed by the Ld. Trial Judge holding:

C “Admittedly the transaction took place at Riyadh in Soudi Arabia
which is beyond the jurisdiction of this court. According to the
defendant since the transaction took place beyond jurisdiction of
this court it lacks territorial jurisdiction to entertain the suit. At the
same time plaintiff would contend that this court has territorial
jurisdiction since the defendant is a resident within the jurisdiction
of this court. As per Section 20(a) C.P.C. every suit shall be
D instituted in a Court within the local limits of whose jurisdiction the
defendant actually and voluntarily resides or carries on business
or personally works for gain. From the address given in the plaint
and from the averments in the plaint it can be seen that defendant
is a resident of Kadinamkulam Village which is within the
E jurisdiction of this court. Defendant himself has no case that he is
not a resident within the jurisdiction of this Court. That being so
this court has territorial jurisdiction to entertain the suit. Contention
to the contrary raised by the defendant is devoid of any merit and
is liable to be rejected. Issue No. 1 is thus found in favour of the
F plaintiff.”

3. Appellant filed a civil revision thereagainst before the High Court
of Kerala which was marked as CRP No. 820 of 2005. By reason of
the impugned judgment, a learned Single Judge of the said Court relying
or on the basis of Section 20(c) of the Code of Civil Procedure and upon
G placing the legislative history of the said provision, opined :

H “20. Thus I agree with the learned counsel for the revision
petitioner that strictly the court did not have territorial jurisdiction
to entertain the suit on the date of the suit. The question of the
nature of relief that has to be granted to the defendant arises for

consideration now. Even if the suit were to be returned, on admitted facts that has to be represented to the same court now as admittedly after the filing the suit the petitioner/defendant is residing permanently, actually and voluntarily in India. Any and every error will not persuade the court to exercise its revisional jurisdiction. Such jurisdiction has to be invoked only in aid of justice. I take note that there is no serious dispute raised about liability or the execution of the promissory Note. There is also no serious contention that if the plaint were returned accepting the plea regarding jurisdiction, it has to be represented to the same court as by then the petitioner had started permanent, actual and voluntary residence in India. I am in these circumstances satisfied that the suit is liable to be considered and disposed of by the court of Subordinate Judge of Attingal and the same need not be directed to be returned.”

4. Mr. P.S. Narasimha, learned counsel appearing on behalf of the appellants in support of this appeal submitted that the High Court itself having arrived at a finding that the suit was not maintainable, could not have refused to exercise its revisional jurisdiction. Although, no oral argument was advanced before us on behalf of the respondents, a Written Submission has been filed supporting the impugned judgment.

5. The Court undoubtedly, exercises a discretionary jurisdiction in terms of Section 115 of the Code of Civil Procedure. Discretion, however, as is well known must be exercised in accordance with law and not de hors the same. See *Reliance Airport Developers Pvt. Ltd. v. Airports Authority of India and Ors.*, (2006) 11 SCALE 208.

6. A suit can be filed only when there exists a cause of action and which have arisen within the jurisdiction of the Court.

7. Sections 15 and 20 of the Code of Civil Procedure provides for the place where a suit can be filed. Section 15 mandates that suit shall be instituted in the Court which is competent to try.

8. The question in regard to the jurisdiction is required to be

A determined with reference to the date on which the suit is filed and entertained and not with reference to a future date. Sections 15 and 19 regulates the filing of the suit at the places where cause of action has arisen. Section 20 operates subject to the limitation contained in Sections 15 to 19. Place of residence of the defendant being one of the exceptions
B thereto. Plaintiff is the *dominus litus*, but he can file a suit only at one or the other places specified in the Code of Civil Procedure and not at any place where he desires.

C 9. In *New Moga Transport Company v. United India Insurance Co. Ltd. and Ors.*, AIR (2004) SC 2154, this Court held;

D “19. The intention of the parties can be culled out from use of the expressions “only”, “alone”, “exclusive” and the like with reference to a particular Court. But the intention to exclude a Court’s jurisdiction should be reflected in clear, unambiguous, explicit and specific terms. In such case only the accepted notions of contract would bind the parties. The first appellate Court was justified in holding that it is only the Court at Udaipur which had jurisdiction to try the suit.

E 10. A distinction must be borne in mind between exercise of jurisdiction by a Civil Court and a Writ Court in this behalf. See *M/s. Kusum Ingots and Alloys Ltd., v. Union of India and Anr.*, AIR (2004) SC 2321. See also *Ambika Industries v. Commissioner of Central Excise*, (2007) 8 SCALE 488.

F 11. Ordinarily, the rights and obligations of the parties are to be worked out with reference to the date of institution of the suit. See *Jindal Vijayanagar Steel (JSW Steel Ltd.) v. Jindal Praxair Oxygen Company Ltd.*, (2006) 8 SCALE 668. Determination in regard to maintainability of the suit, it is trite, must be made with reference to the
G date of the institution of the suit. If a cause of action arises at a later date, a fresh suit may lie but that would not mean that the suit which was not maintainable on the date of its institution, unless an exceptional case is made out therefor can be held to have been validly instituted. Discretion, as is well known, cannot be exercised, arbitrarily or capriciously. It must
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be exercised in accordance with law. When there exists a statute, the question of exercise of jurisdiction which would be contrary to the provisions of the statute would not arise. A

12. Application of doctrine of *dominus litus* is confined only to the cause of action which would fall within Sections 15 to 18 of the Code of Civil Procedure. It will have no application in a case where the provision of Section 20 thereof is sought to be invoked. B

13. It is one thing to say that the parties had their residences in India but the same would not mean that a suit could be filed at any of the places where the defendant resides. At all material times, the parties were at Saudi Arabia. They were residing there only. They had been working for gain in that country. It is also not a case where under the promissory note the amount was to be paid in India. There is nothing on record to show that any demand was made within the State of Kerala and the defendant was under any contractual obligation to pay the said amount in Kerala where the demand has been communicated. C D

14. The High Court itself has held that no part of cause of action arose in the State of Kerala. Respondent has not questioned that part of the order before this Court questioning the said finding. E

15. Respondent, therefore, in our opinion cannot be permitted to raise the said plea before us for the first time.

16. The contention raised on behalf of the respondent that a part of cause of action arose within the jurisdiction of the trial court as the appellant made a commitment of payment of the amount within the jurisdiction thereof, cannot be accepted for more than one reason. Firstly, because no such contention had been raised before the High Court. Secondly, because the High Court itself has arrived at a finding that the learned Trial Judge had no territorial jurisdiction to entertain the suit. It is also not a case where the petitioner had been residing within the local limits of the jurisdiction of the court where the defendant at the time of commencement of the suit was actually or voluntarily residing or carried on business or personally worked for gain. F G H

A 17. He, at the material time, had been residing in Saudi Arabia.

B 18. The material date for the purpose invoking Section 20 of the Code of Civil Procedure is the one of institution of the suit and not the subsequent change of residence. Change of residence subsequent to decision of the Court would not confer territorial jurisdiction in the Court which it did not have.

C 19. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. But, in the facts and circumstances of the case, there shall be no order as to costs.

B.B.B.

Appeal allowed.